UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

No. 1:17-cv-10107-WGY

DAVID SETH WORMAN, et al,
Plaintiffs

vs.

CHARLES D. BAKER, et al,
Defendants

****

For Hearing Before:
Judge William G. Young
at Boston University School of Law

Summary Judgment

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210
Friday, February 9, 2018

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P R O C E E D I N G S

(Begins, 2:05 p.m.)

THE CLERK: Now hearing Civil Matter 17-10107, Worman versus Baker.

THE COURT: Now if you folks would introduce yourselves and whom you represent.

MR. CAMPBELL: Your Honor, my name is Richard Campbell, I represent the plaintiffs, and I'm really here for the purpose of introducing counsel from Washington, D.C., John Sweeney, Sky Woodward, and Mark Nardone, they will be arguing the matter, not me.

THE COURT: Very well, and you folks are of course welcome.

And the Commonwealth?

MS. KOBICK: Good afternoon, your Honor, Assistant Attorney General Julia Kobick and I'm here with Assistant Attorney General Gary Klein and Assistant Attorney General Elizabeth Kaplan.

THE COURT: Thank you, and you're all welcome. Feel free to be seated. But I have a couple of initial procedural questions and I'll jump back and forth, I guess.

So we'll -- these are really to both of you. These are cross-motions for summary judgment and I had you inquire -- I had the Clerk inquire whether you

desired to have them treated as a case-stated and I was informed that you did not, and I don't care which side did not or if you both did not. But since that time, however, I've read a very interesting article in "United States Law Week" which suggests that on cross-motions for summary judgment the Court can go ahead and adjudicate the case so long as the credibility of witnesses is not at issue. The article suggests that the First Circuit is -- and no citation is supplied, but the First Circuit is in that group of circuits, but a number of other circuits are.

So let me just quickly ask you. We'll start with the plaintiffs. Do you think I can do that on this record?

MR. SWEENEY: No, your Honor.

THE COURT: All right. And --

(Interruption by Court Reporter.)

MR. SWEENEY: This is John Parker Sweeney for the plaintiffs, your Honor.

THE COURT: Yes, all right, Mr. Sweeney, you think not, and you think I've got to hold the parties to the strict summary judgment standard?

MR. SWEENEY: That's correct, your Honor. We expect this case will go to the First Circuit and at some point probably will be presented for review to the

United States Supreme Court. We'd like to make sure we have as complete a record as possible.

THE COURT: I certainly can appreciate that, but we're here today and that's my interest as well.

What's the Commonwealth think?

MS. KOBICK: The Commonwealth believes this case could be submitted as a case-stated --

THE COURT: Well, no, that's not happening, they refuse, as is obvious.

MS. KOBICK: Yes, your Honor.

THE COURT: I'm wondering whether, despite their refusal, I can take this record and go ahead?

MS. KOBICK: The defendants haven't moved to strike any of the --

THE COURT: But they have and that's significant.

MS. KOBICK: They have, right, and the defendants have opposed that motion. If this case were to go to trial, perhaps the credibility of the witnesses might be in dispute at that point, but at this point I don't believe there's any dispute over the credibility of the witnesses.

THE COURT: No, but you see I guess that's the question, and that feeds into my next question and my next procedural question here. But I think I should

start with the plaintiffs because I think I know the Commonwealth's position.

If these weapons, if these firearms are military weapons, primarily military-style weapons, then there's no -- under ***Heller*** they fall outside the special scrutiny and I defer to legislative factfinding and your case is over.

That at least is an argument, isn't it?

MR. SWEENEY: That's an argument, your Honor, but one we dispute.

THE COURT: I understand that. But were I to adopt that, I don't have to rule on the striking or anything because I'm simply deferring to the legislative choices made by the Commonwealth of Massachusetts?

MR. SWEENEY: Oh, but the justification of those choices is based upon adjudicative facts.

THE COURT: Well, we'll get to that. But I think I understand you. But I do want to ask the Commonwealth.

You'd accept that?

MS. KOBICK: Yes, your Honor.

THE COURT: In fact that's your argument?

MS. KOBICK: Yes. But the vast majority of the facts at issue are legislative facts.

THE COURT: Well, so you say.

MS. KOBICK: Yes.

THE COURT: And I think now I'm ready. And so let me start with the defense and the defense's motion for summary judgment.

If there is a burden here, you're making a facial challenge to, um, regulatory matters of the Commonwealth of Massachusetts, you bear the burden.

At least you'll concede that, isn't that so?

MR. SWEENEY: No, your Honor, respectfully we do not.

THE COURT: All right.

MR. SWEENEY: We start with ***Heller*** itself which declares that bearable arms are prima facie covered by the Second Amendment, that is a statement in a Second Amendment case.

THE COURT: Well, what about the fact that it's not expected to apply to military-style weapons?

MR. SWEENEY: Well, that is an argument and the facts are disputed.

THE COURT: Well, what facts are in issue as to these?

MR. SWEENEY: Well, let me start. No military in the world issues as standard equipment the banned firearms that are at stake here.

THE COURT: We're talking about military-

styled weapons, they don't have to be found in the TO & E of someone's army, do they?

MR. SWEENEY: The defendants have pointed to not a single firearm that was not originally designed for military use or has derived from a military weapon. There is no line drawn.

Under their military weapons analysis, every firearm -- a civilian firearm, a firearm, an AR-15 recognized by the United States Supreme Court as a civilian firearm, under their analysis there would be no Second Amendment protection. Frankly there is no Second Amendment protection for the handguns in ***Heller*** under their approach. The Colt 1911 has been in service as a military sidearm since 1900, one of the proudest sidearms carried by our military forces designed for the military and it's in wide use by civilians today. Under their analysis, where do you draw the line?

THE COURT: Well, their analysis finds support in the Circuit opinions of various circuits, doesn't it?

MR. SWEENEY: There is one circuit and only one circuit that came out with that analysis, they didn't believe in it so strongly that they didn't also have an alternative analysis under the two-part approach applying intermediate scrutiny.

THE COURT: Now, if you are right and I should

apply intermediate scrutiny here, or the First Circuit analog to intermediate scrutiny, you have the burden of proof on that, don't you?

MR. SWEENEY: Do not. Under heightened scrutiny the government bears the burden of justifying the challenged law.

THE COURT: Even as to intermediate scrutiny?

MR. SWEENEY: Yes, your Honor.

THE COURT: And what's your authority for that?

MR. SWEENEY: United States Supreme Court cases.

THE COURT: What?

MR. SWEENEY: The ***Playboy*** case cited in our brief. Heightened scrutiny involves the burden on the government to justify the statute, not the other way around.

The only case cited by the defendants that we bear the burden is the ***Sampson*** case, which is an Eighth Amendment case involving that standard of cruel and unusual -- not a Second Amendment case, not a First Amendment case, involving tiered layers of scrutiny.

(Pause.)

THE COURT: Go ahead.

MR. SWEENEY: We do not, by the way, contend

that the two-part approach is the way this Court should go in this case. We contend that this Court should apply the text, history, and tradition analysis that ***Heller*** used for the prohibition on firearms in the home.

The ***Powell*** case, which your Honor was involved in in the District Court decision, of course, went to the Court of Appeals and the Court of Appeals made clear what ***Heller*** and ***McDonald*** decided was the setting of defense in the home, what firearms would be used for defense of the home, and then in that context judicial review had been what the Court used there, but it left open -- it made very clear it left open what form of review would be used in future cases not involving that setting.

This case, your Honor, of course is a case of first impression in this court and in the First Circuit. But the closest case we have on point is the ***Rene E*** case.

Rene E involved the possession in the home of a handgun by a juvenile and in that case the Court conducted an extensive text and history analysis of the Second Amendment and the tradition of its implementation and concluded that juveniles were not accorded protection under the Second Amendment, and that case did not mention a two-part approach, did not mention

intermediate scrutiny, but it's the closest we have to possession in the home of firearms that this case involves.

Moreover, to the extent that case might be considered a two-part approach case, as the State contends it is, that case stands for narrow tailoring because in that case the Court twice emphasized that the restriction on juvenile possession in the home was narrowly tailored, narrowly tailored to exclude use for self-defense and defense of others in the home. In other words the statute specifically said a juvenile can take possession of a handgun for the purpose of self-defense in the home. Unfortunately for Rene E that was not the case when he was caught in possession of a handgun when a search warrant was executed in his home. There was also an exception for hunting and employment-related activities.

So the Court said, "Yes, juveniles have had a long tradition of being excluded from rights to firearms under the Second Amendment, but even so this statute was narrowly tailored to allow them rights in certain circumstances and we're going to prove it." So there's a case where the First Circuit used text and history analysis, found that the prohibition in question was appropriate, and demonstrated that there was narrow

tailoring of the legislation that protected it under the Second Amendment.

THE COURT: You don't -- what should I draw from Judge Saylor's opinion in ***Gould vs. O'Leary***?

MR. SWEENEY: Like your own opinion in the ***Powell*** case, your Honor, it involved licensure and moreover outside-the-home possession of a firearm, these are two very material circumstances not involved in the ***Heller*** case.

What ***Heller*** did say about licensure and similar longstanding regulations of firearms was that they're entitled to some judicial deference where the two-part approach that your Honor applied there is not an inappropriate way to go for these longstanding traditional prohibitions. That's not the case here any more than it's the case in ***Heller*** or ***McDonald***.

(Pause.)

MR. SWEENEY: This case is about who gets to choose what firearms will be used in the homes of law-abiding citizens, is it the legislature, the will of the political majority, or is it the people? And if it wasn't for the Second Amendment, surely the answer would be the legislature. But here the Second Amendment says the people choose and the popular choice of firearms in the home happened to be handguns in ***Heller*** and they were

denied handguns.

But the Court didn't stop there and in a response to the District's offer to say, "Well, we'll let them have rifles and shotguns in the home," the Court said "It's no answer that other firearms are available." If firearms that are popularly chosen cannot be used in the home, that's an abridgment of the Second Amendment right. And here too if popular firearms, rifles that are owned by millions of Americans and tens of thousands of Massachusetts law-abiding citizens and are rarely used in criminal acts, if they're not available in the home, that is an abridgment of the Second Amendment Right. The people get to choose.

(Pause.)

THE COURT: I have to tell you, I wish you would develop a little more your, um, reason why these aren't military-style weapons?

MR. SWEENEY: Certainly. Certainly.

All firearms evolve virtually simultaneously for parallel military and civilian uses. These are no different.

Firearms over time evolved both for many lawful civilian purposes, such as self-defense, hunting, and the like, as well as for military purposes. The firearms that have been specifically covered by the bans

here are firearms that were developed either for the military or for civilian uses in parallel tracks. The best example would be the AR-15.

There is evidence in the record that the AR-15 was developed by ArmaLite. Did they have hopes to sell it into the military market? Yes, they did, and their first contract for it was to the Air Force. But at the same time they applied to the ATF for permission to sell a civilian semiautomatic version to the -- to the commercial market for use in hunting, the AR-15 Sporter, which was put on the market in early 1964 before even it was deployed by the U.S. Army as the M-16 fully-automatic version. It is a perfect example of firearms being developed simultaneously for the military and for the commercial uses.

This is not a considered distinction to draw among firearms, there is no line in the sand, and when we see that, as we see that, the breadth of the ban, as articulated by the Attorney General in her notice of enforcement, was such that they had to exempt many firearms that were called within its broad terms and these firearms that were exempted include, for instance, the M-1 Carbine, the M-1 Carbine, one of the quintessential standard-issue military sidearms of the United States Army and other military forces.

THE COURT: Okay, no more than about 5 more minutes, if you wish. Go ahead.

MR. SWEENEY: Your Honor, the facts that underlie the plaintiffs' motion to dismiss are not disputed, the critical facts are that the firearms are in common use. The defendants themselves admit that the AR-15 and the AK-platform firearms are the most popular semiautomatic rifles. Moreover, they do not dispute the trade association estimates of the millions of these firearms that are in circulation. So too the magazines are owned by 10 million or more people and that there are tens of millions of them in circulation.

THE COURT: But when you talk about the magazines, the cutoff here is, um, a magazine of more than 10 rounds?

MR. SWEENEY: Correct, and when I say more than 10 -- magazines -- magazines with a capacity of more than 10 rounds are owned by tens of millions of people.

THE COURT: Does that make any difference? What's the --

MR. SWEENEY: They're in common use. It does under ***Heller***, that's the critical test. They're popular.

THE COURT: Can it be -- can it be that

because something's in common use, it's beyond the regulation of the state?

MR. SWEENEY: That is exactly what the ***Heller*** case stands for, your Honor.

THE COURT: That's your view of ***Heller***?

MR. SWEENEY: That's exactly what the ***Heller*** case stands for.

THE COURT: All right.

MR. SWEENEY: When you have a firearm that's in common use typically possessed for lawful purposes by law-abiding citizens --

THE COURT: Well, what are the lawful purposes that would require, even in a semiautomatic mode, the firing of 15 shots to defend the home?

MR. SWEENEY: We have evidence in the record, your Honor, that the New York Police Department incidents of defensive use of firearms by law enforcement officers, fully 17 percent involve the firing of more than 10 rounds in defense of the officer or others in confrontations with criminals.

THE COURT: We're not talking in those -- looking at that test, we're not talking about an AR-15, are we, we're talking about their handguns?

MR. SWEENEY: There is no difference in terms of the bullets used and the impact between rifles and

handguns, we're talking capacity of magazines. So magazines, whether they're used in a rifle or used in a pistol, you have more than 10 necessary to end an encounter successfully with criminals and at least 17 percent are documented incidents by the New York Police. That is evidence in the record that they're needed for defense situations.

THE COURT: Very well.

All right. Thank you. We'll hear the Commonwealth.

MS. KOBICK: Your Honor is absolutely correct that the first question and the dispositive question in this case is whether the assault weapons and large-capacity magazines are like M-16s and weapons that are most useful in military service, that was one of the limitations that ***Heller***, by its plain language, put on the scope of weapons eligible for Second Amendment protection, and there's no dispute on the facts that bear on that question. They're all legislative facts. The parties agree --

THE COURT: Well, let's not be too conclusive. Now tell me specifically what ***Heller*** said in that respect?

MS. KOBICK: ***Heller*** said that M-16s and the like, weapons that are most useful in military service,

may be banned, and the Fourth Circuit ruled in ***Kolbe*** that under that test assault weapons and large-capacity magazines are not protected by the Second Amendment.

Now everyone agrees that assault weapons like AR-15s and M-16s are functionally equivalent with one difference, so they have the same construction and configuration, they have the same muzzle velocity, within 3,000 feet per second, which is three times as fast as handguns, they have the same range, 500 yards, more than two football fields, they take the same caliber ammunition, and their parts are interchangeable. Everyone agrees that AR-15s were developed for military use during the Vietnam war, they were renamed the M-16 when they were adopted by the Army, that they were adopted because of their phenomenal lethality. The plaintiffs' experts have all --

THE COURT: Their phenomenal what?

MS. KOBICK: Lethality.

The plaintiffs' experts have put in evidence that backs all that up, the defendants' experts have as well, and all of the, um, exhibits that bear on the, you know, the likeness between M-16s and AR-15s also support that.

THE COURT: But aren't you undercutting your own argument here? I mean perhaps I ought to have a trial here and then we'll -- then we'll have the record

that Mr. Sweeney is talking about. If I understood your argument, it is that based upon undisputed facts, the weapons and magazines that are firearms, and magazines that are at issue here, are not within the Second Amendment under ***Heller***, therefore I need go -- therefore the analysis stops, I defer to the judgment made by the people of Massachusetts through their elected representatives in their statutes. That's your argument.

Now, he puts forth very carefully the counterargument and he -- let's say I get there, let's say I get to the First Circuit analog to, um, intermediate scrutiny, I was too quick to say that they bear the burden of proof, was I not?

MS. KOBICK: So two responses, your Honor. First, on the first point, um, there is no dispute about the facts here, so I don't think this undercuts the argument at all, everyone agrees about the, um, underlying similarity between the function of the weapons and the history, the only dispute that we have is a legal question and that is whether the sole difference between the AR-15s and M-16s, which is that AR-15s fire in semiautomatic mode whereas M-16s can fire in semiautomatic and 3-round burst mode, whether that makes AR-15s unlike M-16s? That's a legal question,

that's not a factual question, and the defendants say absolutely not because the Army says their most-effective mode is semiautomatic mode, it instructs its soldiers to use semiautomatic mode. You can simulate automatic fire with AR-15s and other assault weapons through bump stocks or trigger cranks or similar devices, so there's no meaningful constitutional distinction between these two weapons. That is the first question, and if your Honor agrees, then you're right, the analysis ends, assault weapons are not protected by the Second Amendment, and you don't need to get to intermediate scrutiny.

On that question, whether assault weapons and large-capacity magazines are constitutionally protected, the plaintiffs do bear the burden.

THE COURT: And what's your best authority for that?

MS. KOBICK: The ***Sampson*** case makes clear that the plaintiffs bear the burden of proving a constitutional violation.

I agree that if your Honor --

THE COURT: He distinguishes ***Sampson***.

MS. KOBICK: Well, I think if your Honor were to get to intermediate scrutiny, then the government bears the burden, but as to the first question, whether

the weapons are protected --

THE COURT: Oh, that was my question. If I get to intermediate scrutiny, you concede the government bears the burden?

MS. KOBICK: Yes.

THE COURT: All right.

MS. KOBICK: But the first question, the plaintiffs bear the burden.

THE COURT: Well, of course, they're attacking the statute on its face.

MS. KOBICK: Yes.

THE COURT: So -- but I'm not clear what the burden is, um, when you say "the burden"?

If the standard of review is deference to legislative factfinding --

MS. KOBICK: Yes.

THE COURT: -- sometimes known as the "presumption of constitutionality" --

MS. KOBICK: Yes.

THE COURT: -- I don't need an undisputed factual record because it's not for me, it's for the people's elected representatives in the Great and General Court, if that's so, but we are talking about a constitutional right of the individual to bear arms. We're clear on that. So don't you have to pin yourself

to this language in ***Heller*** about military-style weapons?

MS. KOBICK: Well, that language goes to the first question, whether the weapons are constitutionally protected? We say they're not, for that reason we've made alternative arguments, there are several limitations on the scope of the Second Amendment, and the plaintiffs have focused on a different limitation which is whether the weapons are in common use for self-defense? We think we win on that one too, but your Honor doesn't need to get to that limitation if you analyze the question of whether they're like M-16s and what is most useful in military service? But if your Honor were to --

THE COURT: Thank you, what you just said is helpful. So let me frame this question.

MS. KOBICK: Sure.

THE COURT: Let's say you don't win on the military-style issue --

MS. KOBICK: Yes.

THE COURT: -- do I then apply intermediate scrutiny?

MS. KOBICK: No, because your Honor would also have to analyze a different limitation under ***Heller,*** which is whether --

THE COURT: Develop that.

MS. KOBICK: Right -- which is whether assault weapons and large-capacity magazines are in common use for self-defense? And that limitation also comes from ***Heller's*** language and we say "No, they're not in common use for self-defense today, they weren't in common -- they're not analogs of weapons that were in common use at the time of the Founding," um, there is ample evidence to show that --

THE COURT: But how am I going to know that?

MS. KOBICK: There's evidence in the record that shows that assault weapons are virtually never used for self-defense. The plaintiffs' experts couldn't identify a single example of an assault weapon or a large-capacity magazine ever being used for self-defense, neither could the plaintiffs themselves. And for large-capacity magazines, there's evidence in the record showing that, um -- from NRA armed-citizen reports, these are reports of people using weapons in self-defense, that, um, there are virtually never more than 10 shots fired and the average number of shots fired in self-defense is two rounds. So that's --

THE COURT: Evidently police fire considerably more rounds considerably more frequently.

MS. KOBICK: Well, it's self-evident that civilian use of firearms is different than police use of

firearms, your Honor.

So I think even under that limitation, are these weapons in common use for self-defense? The defendants win. This is all before the Court would apply any level of means and scrutiny, and intermediate scrutiny, so that's a separate question.

If your Honor were to get to that question, I fully agree that the cases say that this Court owes deference to the judgment of the legislature, that the test is not strict scrutiny, it's is there a substantial --

THE COURT: Oh, all right, I don't think anyone's arguing for strict scrutiny, but let's -- and I'm following your argument. So there's your defenses short of intermediate scrutiny.

On intermediate scrutiny the government bears the burden of proof. This -- I've got to pay attention to this motion to strike, in which I have, I'm not ruling on it today, and it becomes more a, um, fact-based question, and it's somewhat conclusory to say that these are legislative facts. Perhaps we ought have a trial?

MS. KOBICK: Again, your Honor, I don't think there are disputed facts. Whether you characterize them as "legislative" or "adjudicative," there is ample evidence that these weapons are disproportionally used

in mass public shootings and in murders of police officers. The plaintiffs haven't put in any evidence to counter that.

There is ample evidence that these weapons inflict more severe injuries in more people than other weapons like handguns. The plaintiffs don't have evidence to counter that. The plaintiffs focus on a different question, which is whether this Court should only look to research based on Massachusetts episodes or whether you can look to, um, national research, empirical research that takes account of the use of weapons nationwide. That's a legal question, that's not a factual question. So even under intermediate scrutiny, there aren't disputed facts, so a trial's not necessary.

THE COURT: About 4 more minutes.

MS. KOBICK: Sure, your Honor.

I just want to flush out those, um, points a little bit, which is that these weapons are disproportionally used in mass public shootings and in murders of police officers by huge magnitudes. So, um, at most assault weapons account for 3 percent of the U.S. gun stock. They're used in between 13 and 20 percent of the murders of police officers. They're used in between 22 percent and 37 percent of mass public shootings. And as we've seen over and over and over

again, in Sutherland Springs in Las Vegas --

THE COURT: But you see -- you know when you make an argument like that -- it's a Constitution that we construe here, what you're doing is making a public policy argument and that's not for this court, and it's not because they threaten, "Oh, this case is going all the way to the Supreme Court." I'm a judge of the United States, it's not for this court, it's not for any of those courts. The Supreme Court has explained that individual right to bear arms, that right exists, whatever the majority think.

And one of the problems, of course, Justice Scalia ironically in many of his speeches recognized this, that when the Court says that they're "constitutionalizes something," as of course they did in the Second Amendment, as they did in ***Citizens United***, the views of the majority don't bear on the issue as to policy unless that majority can amend the Constitution as the justices have construed it, and of course I'm bound by what the justices said in ***Heller*** and I will carry that out.

So you're making a public policy argument. If I have to defer to the legislature, again I don't, um, evaluate the policy, I simply say "There is a policy, this is the legislature's policy, that's an end of it," if I do that. We were talking about intermediate

scrutiny. Maybe we ought to have a trial then?

MS. KOBICK: So, your Honor, the question -- I agree with your comments about a right enshrined in the Constitution, but the question under intermediate scrutiny is, is there a substantial relationship between the public safety goal here and what the legislature has done, which is banning assault weapons and large-capacity magazines? So the question for your Honor is, was it reasonable for the legislature to think that it could achieve its public safety goal?

THE COURT: A matter on which you bear the burden of proof?

MS. KOBICK: Yes, and I mean --

THE COURT: But if the answer is "Yes," you see, if the answer is "Yes," under ***Reeves vs. Sanderson Plumbing***, then the whole concept of burden of proof is that there are facts to be found, so I must treat this as summary judgment, so I have to look at their record, what they proffer, and give all reasonable intendments their way, and nevertheless you win.

And you think that's so?

MS. KOBICK: Yes, because again --

THE COURT: 2 minutes to tell me why, on their record.

MS. KOBICK: Well, I think your Honor has to

look at the entire record before you --

THE COURT: Not yours because I could disbelieve yours, if it's factfinding, only theirs, what they admit.

MS. KOBICK: That's true if there were a dispute of material fact, but there's no -- there are not disputes here.

THE COURT: And so where there's no dispute, I look to their record and say, "Well, they admit this and that's not disputed." All right. I agree.

2 minutes why you win on their record?

MS. KOBICK: Well, your Honor, I do want to push back because if the government bears the burden of proof, then the government has to put in evidence in to satisfy its burden.

THE COURT: No one says that you've lost, all you have to show is that there's a dispute. No one says that I give them summary judgment today on the argument you're making, what I say is, or I'm not saying it, I'm just positing it, I say, "Well, the next thing to do is set this down for trial and give me the final pretrial memorandum and we'll see what witnesses we have and we'll all sit here and we'll listen to these so-called "experts" and I'll learn a lot about muzzle velocity and I'll make my own determination about what the effect of

having so many of these weapons out in the hands of the populist is. Respectfully I do think I understand your argument. Thank you. I don't know that we get there. Maybe we do.

I'm much aided both by your written briefs -- and I want to say this to all counsel, by your written briefs and by your skillful and zealous oral advocacy. I do welcome it. I'll take the matter under advisement.

MR. SWEENEY: Thank you, your Honor.

MS. KOBICK: Thank you.

(Ends 2:30 p.m.)

C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the foregoing record is a true and accurate transcription of my stenographic notes before Judge William G. Young, on Friday, February 9, 2018, to the best of my skill and ability.

/s/ Richard H. Romanow 02-14-18
_____
RICHARD H. ROMANOW Date